In the Supreme Court of the United States

OCTOBER TERM, 1960

No._____

KING COLONY RANCH, an association, and
KING COLONY RANCH, a corporation,

Petitioners,

vs.

THE STATE OF MONTANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FORREST H. ANDERSON,
Attorney General, State of Montana,
Capitol Building, Helena, Montana,
Attorney for Respondent.

WILLIAM F. CROWLEY,
Assistant Attorney General, State of Montana,
Capitol Building, Helena, Montana

GEORGE T. BENNETT,
Special Assistant Attorney General,
Capitol Building, Helena, Montana
Of Counsel

In the Supreme Court of the United States

OCTOBER TERM, 1960

No.

KING COLONY RANCH, an association, and
KING COLONY RANCH, a corporation,

Petitioners,

vs.

THE STATE OF MONTANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

Pursuant to Rule 24 of this Court, Respondents herewith present their brief in opposition to the petition for a writ of certiorari filed with this court on the 20th day of June by the King Colony Ranch, an association and corporation.

ISSUE PRESENTED

The petitioners herein contend that the Corporation License Tax imposed by the State of Montana and contained in Sections 84-1501 et seq., Revised Codes of Mon-

tana, 1947, as imposed upon the petitioners, violates the First Amendment to the Constitution of the United States.

NATURE OF THE TAX

The Montana Corporation License Tax is imposed upon all corporations engaged in business in the State of Montana and is a percentage of the net income of such corporation derived from sources within Montana during the preceding fiscal year. The term "corporation" is defined by the Act to include associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity. The tax is entirely a revenue measure and has no regulatory effect.

The Montana Corporation License Tax Act specifically exempts certain corporations, Section 84-1501, Revised Codes of Montana, 1947. Among the exempt corporations are those organized and operated exclusively for religious purposes, no part of the net income of which inures to the benefit of any private shareholder or individual. Also exempt are corporations organized for the exclusive purpose of holding title to property, collecting the income from such property and turning the same over to an organization which is itself exempt. These exemptions are similar to those granted corporations under the Internal Revenue Code of 1954, by Section 501.

The trial court found that the petitioner was engaged in business in the State of Montana. The business con-

stituted farming and ranching and income was derived from the sale of the farm and ranch products in excess of the needs of the Colony, on the general market and in competition with other farmers and ranchers.

PETITIONERS' AUTHORITIES

Petitioners cite and rely upon the cases of Murdock vs. Pennsylvania, 319 U.S. 805, 87 L. Ed. 1292, 63 Sup. Ct. 8701, 146 A.L.R. 81; Follett vs. McCormick, 301 U.S. 573, 64 S. Ct. 717, 81 L. Ed. 938 and State vs. VanDallam, 69 S.D. 466, 11 N.W. 2d 523. All of these cases involved the Jehovah's Witnesses, and the activities which were claimed to constitute religious practices were the distribution of printed religious material for which contributions were solicited.

In Murdock vs. Pennsylvania, the Court, through Justice Douglas, stated that the distribution of religious literature was "an age-old form of missionary evangelism" and, as such, constituted a religious activity. The Court also found that this activity constituted the dissemination of ideas and as such was protected not only as a religious activity, but under the right of freedom of press and speech.

The Murdock Decision sharply divided the Court and primarily over the question of whether the distribution of religious literature was essentially a religious practice or a commercial activity. In the Follett Case the defend-

ant was an ordained minister of the Jehovah's Witness religious sect and earned his entire livelihood from the sale of religious literature. Again the court divided as to the question of the nature of the activities and whether they constituted primarily religious or commercial pursuits.

The activities upon which the Montana Corporation License Tax Act fall do not raise such questions. There is no element of religious practice or dissemination of ideas involved in the sale of farm and ranch products by a corporation.

As Justice Douglas stated in the Murdock Case on page 110 of the official report:

> "Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital."

Here, the activities of the King Colony and upon which the tax involved falls are "purely commercial." It is also clear from a reading of the Murdock Decision, as well as that of the Follett Case, that activities which are in and of themselves not religious cannot be deemed so by any religious group in order to shield them from taxation by use of the First Amendment. This is made clear by the majority opinion in the Murdock Decision and especially from the statement appearing on page 108 thereof which reads as follows:

> "Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be

made a religious rite and by the zeal of the practitioners swept into the First Amendment."

The sole activity upon which the State of Montana has imposed a tax with respect to the King Colony is the conducting, by that group, of a farming and ranching business in corporate form. The State of Montana, in effect, requires this group to pay a percentage of the net income it derived from its farming and ranching operations to the State of Montana.

PETITIONERS CANNOT RAISE ANY QUESTION OF RELIGIOUS LIBERTIES

There are no natural persons a party to this cause. This matter constitutes a suit by the State of Montana against a corporation. The guarantees of the First Amendment of the right to free expression of religious beliefs and practices is the right of natural persons.

Petitioners have been unable to cite any decision directly holding that a corporation or association may raise the question of the infringement of religious liberties. We believe there is a sound reason why such assertion by a corporation should be denied. It is difficult to conceive of natural persons worshipping God and exercising their religious beliefs and practices by and through a corporation. If, in fact, the imposition of a tax by the State of Montana upon the business income of a corporation organized primarily for the conducting of the business of

farming and ranching does infringe upon the free expression of the religious beliefs of the members of this colony who work for and derive their sustenance from such corporation, then these individuals had a right to intervene in the District Court and to assert such rights. We, therefore, believe that the questions attempted to be raised here with regard to the First Amendment by this corporation should be denied.

Hague vs. C.I.O., 307 U.S. 496, 595 Sup. Ct. 954, 83 L. Ed. 1423;

Northwestern National Life Insurance Co. vs. Riggs, 203 U.S. 243;

Western Turf Association vs. Greenberg 204 U.S. 359;

International Ladies Garment Workers Union vs. Seamprufe, Inc., 121 Fed. Supp. 165.

Respectfully submitted,

FORREST H. ANDERSON,

Attorney for Respondent,

WILLIAM F. CROWLEY,

GEORGE T. BENNETT,

Of Counsel